

Hair et al -- Appln. No. 09/729,853

REMARKS

Claims 58-130 are pending in the application.

Applicant would like to thank the Examiner for the courtesy of the Examiner interview on Thursday, January 29, 2004.

Claims 58-130 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-51 of U.S. Patent 6,384,402.

Applicant respectfully traverses this rejection.

Each of claims 58-130 is directed either to a vending machine having "a transparent front" or to an optical vend-sensing system configured to sense when a product selected by a consumer is dispensed in a transparent front vending machine" (emphasis added). Transparent front vending machines are a specific type of vending machine allowing the consumer to view the actual product to be selected and dispensed, or a sample thereof, thereby allowing the consumer to determine whether they wish to select that product. Other vending machines do not allow the consumer to view the selectable products. For instance, some types of vending machines that do not have a transparent front and do not allow visual inspection of the actual items to be vended are soda vending machines, frozen food vending machines, stamp vending machines, french fry/pizza vending machines and pharmaceutical/medical item vending machines. In addition, there are also candy/chip/snack vending machines that do not have a transparent front but use graphics or labels to identify the product to be vended.

None of claims 1-51 of the '402 patent is limited to, or limited for use with, a transparent front vending machine. In fact, it specifically states at col. 2, lines 42-44 of the

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'402 patent, that "Use of the term glass is not intended to mean that the front of the vendor cannot in whole or in part be made of another material."

The Examiner notes at page 3 of the Office Action that the claims include the term "upon selection by a customer" (as used, for example, in claim 37 at lines 2-5) and notes that this would be accomplished by viewing the products through a glass. However, the selection by the customer is done via a selection input device. See, for instance, col. 5, lines 38-48.

Spaced, for example, about 9 inches (23 cm) in front of the front edges of the tray assemblies as a panel in an openable/lockable door (not shown), is a glass front 22, through which a prospective customer can view the leading packaged products available for being vended upon operation of the machine. The door, to one side of the glass front, further includes a selector panel, or generally a payment and selection unit, (not shown) which includes means for accepting payment from the user, and for the user to select which column he or she wishes to receive the leading packaged product from. (emphasis added)

See also, col. 15, lines 26-33.

Rather, the spiral or spirals turn until either it has been sensed by the vend-sensing system that a product has been vended, or (in the preferred implementation) that the spiral has, or spirals have, turned through 540.degree. and then pulsed three times (whereupon, if no product is sensed to have been dispersed), the customer is given by the selector panel a choice to have their form of payment refunded, or to select another column's product. (emphasis added)

Thus, "selection" refers to the input of the selection data into the selection input device, such as a selector panel, and the customer selects a product by inputting the selection data into the selection input device.

For these reasons, claims 1-51 of the '402 patent do not render claims 58-130 obvious under the judicially created doctrine of obviousness-type double patenting.

Independent claim 98 further requires that the vending machine include

a plurality of dispensing mechanisms, each configured to respectively dispense a product selected by a consumer, at least one of the dispensing mechanisms configured to dispense a product having at least one of a different size

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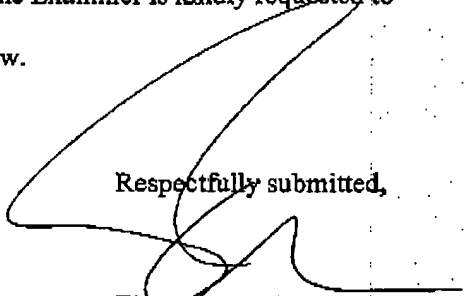
and a different shape as compared to a product dispensed by another of the dispensing mechanisms . . . (emphasis added)

None of the claims of the '402 patent disclose that at least one of the dispensing mechanisms be configured to dispense a product having at least one of a different size and a different shape as compared to a product dispensed by another of the dispensing mechanisms. Nor do they disclose the use of a helical dispensing member. (claim 101). Therefore, claims 1-51 of the '402 patent do not render claims 98-114 obvious under the judicially created doctrine of obviousness-type double patenting for this further reason.

In view of this, it is respectfully requested that this rejection of claims 58-130 be withdrawn.

In view of the above remarks, it is believed that the application is in condition for allowance. A notice to that effect is earnestly solicited. Should anything else be needed to place the application in condition for allowance, the Examiner is kindly requested to contact the undersigned at the phone number below.

Respectfully submitted,


Timothy J. Klima
Reg. No. 34,852

Davidson Berquist
Klima & Jackson LLP
4501 North Fairfax Drive
Suite 920
Arlington, VA 22203
(703) 248-0333 Main
(703) 248-9558 Fax